

AMENDED IN SENATE APRIL 28, 2010
AMENDED IN SENATE MARCH 23, 2010

SENATE BILL

No. 1457

Introduced by Senator Cogdill

February 19, 2010

An act to add Section 14661.2 to the Government Code, relating to public contracts.

LEGISLATIVE COUNSEL'S DIGEST

SB 1457, as amended, Cogdill. State facilities: alternative project delivery methods.

Existing law establishes procedures governing design-bid-build methods of procurement, but permits the Director of General Services, when authorized by the Legislature, to use the design-build procurement process for state office facilities, other buildings, structures, and related facilities. Existing law further requires the director, prior to contracting for the procurement of state office facilities and other state buildings and structures, to prepare a program setting forth the scope of the project and to establish a competitive prequalification process, as provided.

This bill would authorize the Director of General Services to undertake public works of improvement by using ~~other alternative methods~~ *an alternative method* of procurement, as prescribed. The bill would authorize the director, whenever a public works appropriation is made ~~for acquisition, preliminary plans, working drawings, or the construction phase of a project~~, to determine the most appropriate delivery method for that project. The bill would require the department to follow specified criteria for those contracts and would set forth the applicable labor and contracting standards, including payment procedures, delivery methods, and remedies in case of default.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares all of the
2 following:

3 (a) It is in the best interest of the State of California to construct
4 state offices and other necessary program facilities in a
5 cost-efficient manner that represents the best overall value to the
6 taxpayers and has the greatest benefit to our state's economy.

7 (b) Alternative project delivery methods can be an attractive
8 option to departments in comparison to the existing three-step
9 (design-bid-build) process.

10 (c) The State of California should be able to utilize cost-effective
11 options for the delivery of public works projects, in accordance
12 with the national trend, which include authorizations in California
13 to allow public entities to utilize alternative delivery methods.

14 SEC. 2. Section 14661.2 is added to the Government Code, to
15 read:

16 14661.2. (a) Notwithstanding any other law, the Department
17 of General Services may undertake public works of improvement
18 by using ~~any of the methods~~ *the method* set forth in this section.
19 The availability of ~~these alternative methods~~ *this method* shall not
20 preclude the use of other methods of project delivery.

21 (b) For purposes of this section, the following definitions apply:

22 ~~(1) "Construction manager at risk contract" means a~~
23 ~~competitively bid contract by a department with an individual,~~
24 ~~partnership, joint venture, corporation, or other recognized legal~~
25 ~~entity, which is appropriately licensed in this state and which~~
26 ~~guarantees the cost of a project and furnishes construction~~
27 ~~management services, including, but not limited to, preparation~~
28 ~~and coordination of bid packages, scheduling, cost control, value~~
29 ~~engineering, evaluation, preconstruction services, and construction~~
30 ~~administration.~~

31 ~~(2)~~

32 ~~(1)~~ "Department" means the Department of General Services
33 as to any project under the jurisdiction of that department, or its
34 successor department or agency.

35 ~~(3)~~

1 (2) “Director” means the Director of General Services.

2 ~~(4)~~

3 (3) “Job order contract” means a competitively bid, fixed priced,
4 indefinite quantity procurement contract issued by a department
5 to a job order contractor for a definite project or work, as compiled
6 from a catalog of construction tasks to be performed pursuant to
7 a job order contract. Each job order under a job order contract shall
8 not exceed the total cost limit established by the Director of
9 Finance pursuant to subdivision (b) of Section 10105 of the Public
10 Contract Code.

11 (c) Whenever an appropriation for a public works project is
12 ~~made for acquisition, preliminary plans, working drawings, or the~~
13 ~~construction phase made~~, the director shall determine the most
14 appropriate delivery method for that project. The director shall
15 consider the following criteria:

16 (1) The nature of the project.

17 (2) The project delivery schedules.

18 (3) Overall project cost, including life cycle costs during the
19 operational phase following construction.

20 (4) The ability to achieve ~~design~~, construction; or operational
21 features not achievable through the design-bid-build method.

22 ~~(5) Shifting owner risk from the department to the design or~~
23 ~~contracting entities.~~

24 ~~(6)~~

25 (5) Minimizing change orders.

26 ~~(7)~~

27 (6) Other criteria determined by the director to be critical to the
28 project based on specific facility program.

29 (d) Contracts entered into using *an* alternative delivery ~~methods~~
30 *method* pursuant to this section are subject to all of the following:

31 (1) Any entity entering into such a contract shall not be exempt
32 from the provisions of the Labor Code.

33 (2) Public notice of a project shall be provided in accordance
34 with Sections 10140 and 10141 of the Public Contract Code.

35 (3) The contract shall provide for the filing of separate
36 performance and payment bonds by the contractor in accordance
37 with Sections 3247, 3248, 3249, 3250, 3251, and 3252 of the Civil
38 Code, and Sections 7103 and 7200 of the Public Contract Code.

39 (4) Each bond shall be in a sum as provided in Section 3248 of
40 the Civil Code.

1 (5) The payment bond shall secure the payment of the claims
2 of laborers, mechanics, or material men employed on the work
3 under the contract and shall contain all other provisions required
4 by law.

5 (6) Any payment or performance bond written for the purpose
6 of alternative delivery methods shall be written using a bond form
7 developed by the department pursuant to subdivision (g) of Section
8 14661.1 of the Government Code. The purpose of this subdivision
9 is to promote uniformity of bond forms to be used for alternative
10 delivery system projects throughout the state. The performance
11 bond shall guarantee the faithful performance of the contract by
12 the contractor. In lieu of payment and performance bonds the
13 director may elect to purchase separate insurance to cover the
14 performance of the contractor.

15 (7) No payment shall be made upon the contract to the contractor
16 or any assignee of the contractor until any order by the director
17 that a sufficient surety be substituted on the bond or that a new,
18 additional, or supplemental bond be given, is satisfied. No
19 cancellation of or withdrawal of a surety from a bond is effective
20 unless approved by the director.

21 (8) The contract shall contain a provision regarding the time
22 when the whole or any specified portion of the work contemplated
23 shall be completed, and shall provide that for each day completion
24 is delayed beyond the specified time, the contractor shall forfeit
25 and pay to the state a specified sum of money to be deducted from
26 any payments due or to become due to the contractor. The sum so
27 specified is valid as liquidated damages, unless manifestly
28 unreasonable under the circumstances existing at the time the
29 contract was made. ~~Any contract pursuant to this section may also
30 provide for the payment of extra compensation to the contractor
31 as a bonus for completion prior to the specified time. The provision
32 for extra compensation, if used, shall be included in the
33 specifications, which shall clearly set forth the basis for the
34 payment. Inclusion of a bonus for early completion clause shall
35 not be used as a reason for augmentation of the public work
36 appropriation.~~

37 (9) Contract payments shall be made as prescribed in Sections
38 10261 and 10261.5 of the Public Contract Code.

1 (10) Any contractor or subcontractor shall pay his or her
2 subcontractors in accordance with Sections 10262 and 10262.5 of
3 the Public Contract Code.

4 (11) (A) If the director determines that a contractor has failed
5 to supply an adequate workforce or material of proper quality, or
6 has failed to comply with Section 10262 of the Public Contract
7 Code, or has failed in any other respect to complete the work with
8 the diligence and force specified by the contract, the director may
9 do either of the following:

10 (i) After written notice of at least five days to the contractor
11 specifying the defaults to be remedied, provide any necessary labor
12 or materials and deduct the cost from any money due or to become
13 due to the contractor under the contract.

14 (ii) If the director considers that the failure is sufficient ground
15 for termination, the director may give written notice of at least five
16 days to the contractor and the contractor's sureties, that if the
17 defaults are not remedied, the contractor's control over the work
18 shall be terminated.

19 (B) If the defaults are not remedied within the time specified in
20 the notice, the contractor's control shall terminate as of the
21 expiration of that time.

22 (12) A contract entered into pursuant to this section shall comply
23 with Section 10263 of the Public Contract Code with respect to
24 the substitution of securities for any moneys withheld by a public
25 agency to ensure performance under a contract.

26 (e) Before entering into a contract for a project pursuant to this
27 section, the director shall make arrangements for preparation of
28 the following:

29 ~~(1) Complete plans and specifications setting forth the directions~~
30 ~~needed to enable a competent mechanic or other builder to~~
31 ~~implement them.~~

32 ~~(2) The necessary documents for the solicitation of bids for the~~
33 ~~construction manager at risk contract method, including~~
34 ~~prequalification standards, schematic plans, and outline~~
35 ~~specifications indicating the general scope of the project and the~~
36 ~~designation of fees and other fixed costs upon which prequalified~~
37 ~~contractors shall be invited to submit competitive bids, which shall~~
38 ~~serve as the basis for selection.~~

39 ~~(3) The~~ the necessary documents for the solicitation of bids for
40 the job order contract method, including prequalification standards,

1 schematic plans, and outline specifications indicating the general
2 scope of the project and the designation of fees and other fixed
3 costs upon which prequalified contractors shall be invited to submit
4 bids, which shall serve as the basis for selection.

5 (f) Notwithstanding any provision of the Public Contract Code,
6 Chapter 3 (commencing with Section 15815) of Part 10b of
7 Division 3 of this code, or any other law, the department shall
8 establish policies and procedures to implement this section.

9 (g) *Contracts awarded pursuant to this section shall not include*
10 *services defined in Chapter 10 (commencing with Section 4525)*
11 *of Division 5 of Title 1.*